IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 170 of 2006.

Decided on: 16.06.2007.

Lachhman.

… … … Petitioner.

Versus

Kishan Chand and Others.

… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *NO.*

For the petitioner:	**Mr. Karan Singh, Advocate.**
For Respondents No.1 to 3:	**Mr. Sanjeev Kuthiala, Advocate.**
For Respondent No.4:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi, Deputy Advocate Generals.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that predecessor-in-interest of respondents No.1 to 3, Shri Khazana Ram filed an appeal under Section 30(3) of H.P. Consolidation of Holdings (Prevention of Fragmentation) Act, 1971 against the order of Consolidation Officer dated 17.5.1993 in objection No.498/1991. The Settlement Officer accepted the

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Whether reporters of local papers may be allowed to see the judgment? No.

appeal on 18.7.2000 and remanded the case back to the Consolidation Officer, Mandi with a direction to inspect Khasra Nos. 252 and 226 and make allotment as per convenience and deficiency be made good from corner. The Consolidation Officer in his order dated 6.6.2001 had allotted the land in the following manner:-

Name of rightholder	Excluded				Included			
1. Khajana Ram s/o Shyama, Khewat No.9/6, Jamababdi 1994-95	Old	New	Ordinary	Std.	Old	New	Ordinary	Std.
	249 min	238 min	0.3.84	001.184	252	241	00.376	00.1.41
2. Lachhaman s/o Shyama Khewat No.9/6 Jamabandi 1994-95	252 min	241	0.3.76	001.41	249 min	238/1	000.384	001.44

The petitioner filed an appeal against the order dated 6.6.2001 before the Settlement Officer on 29.7.2001. The Settlement Officer after inspecting the spot on 30.4.2002 in the presence of the parties had found that area of Khasra No.249 allotted to the petitioner by Consolidation Officer was digphot and of poor quality, whereas direction was issued to the Consolidation Officer for allotment of area from Khasra Nos. 252 and 226. The Settlement Officer gave a finding that the amendment order dated 6.6.2001 in remand case passed by the Consolidation Officer was against the direction in case No.9/2001 under Section 30 (3) as per value and feasibility of cultivation. Consequently, the Settlement Officer had passed the following order whereby the amendment was carried out and allotment of Khasra No.252 min old was made:-

Name of owner	Excluded			Included		
1. Present mutation No.251 Lachhman s/o Shyama, Khata No.88/95	Kh. No. 238/1	Ordinary 0.03.84	Std. 0.01.44	Kh. No. 241	Ordinary 00.3.76	Std. 00.1.41
2. Present Mutation No.254 Khajana s/o Shyama s/o Panjku Khata No. 86/93	241	0.03.76	0.01.41	288/1	00.03.84	0.01.44

The respondents had preferred a revision before the Director, Consolidation of Holdings, H.P. under Section 30(4) of H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 against the order of the Settlement Officer dated 3.5.2002. The Director had accepted the appeal and the order of the Consolidation Officer dated 6.6.2001 passed in remand case No. 23/2001 was up-held.

Mr. Karan Singh had strenuously argued that the order passed by the Director in revision under Section 54 of the H.P. H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 is not sustainable in the eyes of law and the order passed by the Settlement Officer on 3.5.2002 is in accordance with law and the same is required to be up-held. Mr. Sanjeev Kuthiala appearing on behalf of respondents No.1 to 3 had supported the order passed by the Director on 1.10.2005.

I have heard the parties and perused the record.

It is evident from the order passed by the Settlement Officer that while remanding the case back to the Consolidation Officer, he had directed him to inspect Khasra Nos. 252 and 226 alone. The Consolidation Officer in total defiance of the order passed by the Settlement Officer had included Khasra no.249 also as reproduced above. The Settlement Officer in appeal has rightly observed that

the Consolidation Officer did not obey the direction issued by way of remand whereby he had to conduct the inspection only with regard to Khasra Nos. 252 and 226. The Settlement Officer had himself inspected the spot on 30.4.2002 in the presence of the parties. If the spot had been visited in the presence of the parties, views of both the parties are presumed to have been taken into consideration. The Settlement Officer after visiting the spot had come to definite conclusion that Khasra No.249 was of a poor quality. The Settlement Officer had passed a proper order by confining himself to two Khasra Nos., i.e. Khasra No.252 and 226 without touching Khasra No.249. The dispute was with regard to Khasra Nos. 252 and 226. But the learned Director, Consolidation has also taken into consideration Khasra No.249. The orders passed by the Settlement Officer dated 18.7.2000 as well as order dated 3.5.2002 were passed after visiting the spot in presence of the parties. The Director, Consolidation has not taken into consideration that Khasra No.249 was of a poor quality and the same had wrongly been taken into consideration by the Consolidation Officer in his order dated 6.6.2001.

Accordingly, this petition is allowed. The order of Director, dated 1.10.2005 is quashed and set aside. The order of the Settlement Officer dated 3.5.2002 is up-held. There shall be no order as to costs.

June 16, 2007 **(Rajiv Sharma)**
(sck). **Judge**